

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

DAVID VAN ELZEN, individually and on behalf of all others similarly situated,

Case No. 1:22-cv-00859-WCG

Judge William C. Griesbach

Plaintiff,

V.

ADVISORS IGNITE USA LLC, an Illinois limited liability company,

Defendant.

**STIPULATED JOINT MOTION TO VACATE THE COURT'S JANUARY 18, 2024
DECISION AND ORDER DENYING MOTION FOR CLASS CERTIFICATION (Dkt. 42)**

Plaintiff David Van Elzen and Defendant Advisors Ignite USA LLC stipulate and hereby jointly move this Court to vacate its January 18, 2024 Decision and Order Denying Motion for Class Certification (Dkt. 42). In support of their motion, the parties state as follows:

1. On September 28, 2023, Plaintiff filed a motion for class certification seeking certification of a class under the Telephone Consumer Protection Act (Dkt. 31-32).

2. On January 18, 2024 the Court entered its Decision and Order Denying Motion for Class Certification, finding, inter alia, that Plaintiff's proposed class could not satisfy the predominance requirement.

3. The parties understand, agree and stipulate that this Court's January 18, 2024 Decision and Order Denying Motion for Class Certification is not final, as final judgment has not been entered in this case.

4. Recently, the parties reached an agreement to settle all of the claims in the above-captioned litigation in advance of trial. However, the parties agreed that the filing of a joint motion for vacatur of this Court’s January 18, 2024 Decision and Order Denying Motion for Class Certification is a term to the parties’ settlement. Following the Court’s ruling on this motion, the parties have agreed that this litigation, as well as related litigation pending in other courts, will be dismissed with prejudice, and there will be no further proceedings in this Court or the appellate courts with respect to this case.

5. The Court has the power to vacate its non-final decisions and orders. *See, e.g., United States v. NCR Corp.*, No. 10-C-910, 2019 U.S. Dist. LEXIS 136691 (E.D. Wis. Mar. 14, 2019); *Marine Travelift, Inc. v. ASCOM SpA*, No. 14-C-443, 2017 U.S. Dist. LEXIS 76906 (E.D. Wis. Feb. 27, 2017); *DISA Indus. A/S v. Thyssenkrupp Waupaca, Inc.*, No. 07-C-949, 2009 U.S. Dist. LEXIS 134497 (E.D. Wis. Sep. 28, 2009) (citing *Gould v. Bowyer*, 11 F.3d 82, 84 (7th Cir. 1993)).

For the foregoing reasons, Plaintiff David Van Elzen and Defendant Advisors Ignite USA LLC respectfully request that this Court enter an Order (1) vacating its January 18, 2024 Decision and Order Denying Motion for Class Certification (Dkt. 42); and (2) granting any further relief this Court deems just and necessary.

DATED this 5th day of June, 2024. Respectfully submitted,

/s/ Avi R. Kaufman

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